

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MORICKO KEM GRAY,

Defendant-Appellant.

UNPUBLISHED

September 15, 2015

No. 322309

Wayne Circuit Court

LC No. 14-000313-FH

Before: MURRAY, P.J., and METER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of carrying a concealed weapon, MCL 750.227. Defendant was sentenced to one year of probation for his conviction. We affirm.

Defendant asserts that he was denied the right to confront the witnesses against him as guaranteed by the Confrontation Clause of the Sixth Amendment to the United States Constitution.

In order to properly preserve the issue, defendant must specifically object at trial on Confrontation Clause grounds and make an offer of proof identifying what relevant evidence he was unable to present or what issues he was unable to adequately explore because of the trial court's limitation. *People v McPherson*, 263 Mich App 124, 137; 687 NW2d 370 (2004). Defendant did not object on Confrontation Clause grounds when the trial court limited defendant's cross-examination of Detroit Police Officers Chancellor Searcy and Charles Lynem. Therefore, the issue is not preserved.

This Court reviews unpreserved issues for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). In order for a defendant to satisfy the plain error test, he must show that (1) an error occurred, (2) the error was plain, clear or obvious, (3) and the plain error affected substantial rights. *Id.* The third prong requires a showing of prejudice. *Id.* Prejudice occurs when the error affected the outcome of the lower court proceedings. *Id.*

Defendant argues that he was denied his right to confront witnesses when the trial court did not allow him to cross-examine Officers Searcy and Lynem regarding the tinting of the truck's windows and the height of the truck to undermine Officers Searcy's and Lynem's credibility. The Confrontation Clause secures the right of cross-examination. *People v Adamski*,

198 Mich App 133, 138; 497 NW2d 546 (1993). There are, however, limits to the right of cross-examination, as “neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject.” *Id.* “The right of cross-examination does not include a right to cross-examine on irrelevant issues and may bow to accommodate other legitimate interests of the trial process or of society.” *Id.* “Cross-examination may be denied with respect to collateral matters bearing only on general credibility, as well as on irrelevant issues.” *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992) (citation omitted). Moreover, trial judges “ ‘retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limitations on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witnesses’ safety, or interrogation that is repetitive or only marginally relevant.’ ” *Adamski*, 198 Mich App at 138, quoting *Delaware v Van Arsdall*, 475 US 673, 679; 106 S Ct 1431; 89 L Ed 2d 674 (1986). “Relevant evidence” is defined as “ ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’ ” *People v Bynum*, 496 Mich 610, 624 n 24; 852 NW2d 570 (2014), quoting MRE 401.

The elements of carrying a concealed weapon are: “(1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was carrying it.” *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999) (citation and quotation marks omitted). When a defendant “exercises some element of intentional control or dominion” over a weapon, a defendant can be found to have carried a weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). Several factors can be considered to determine whether a defendant carried a weapon, including:

(1) the accessibility or proximity of the weapon to the person of the defendant, (2) defendant’s awareness that the weapon was in the motor vehicle, (3) defendant’s possession of items that connect him to the weapon, such as ammunition, (4) defendant’s ownership or operation of the vehicle, and (5) the length of time during which defendant drove or occupied the vehicle. [*Id.*]

Additionally, a defendant has constructive possession of a firearm when the defendant has “proximity to the article together with indicia of control.” *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989).

The proposed evidence of the window tinting and height of the vehicle were irrelevant to the issues of whether the guns were present in defendant’s vehicle, whether defendant knew or was aware of the presence of the guns, and whether defendant was “carrying” the guns, as there was no dispute that the weapons were retrieved from defendant’s vehicle. Whether the officers could see through the tinted windows, or whether one was mistaken in his testimony about the existence of tinted windows, did not have any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. *Bynum*, 496 Mich at 624 n 24, citing MRE 401. Because this evidence was irrelevant and the Confrontation Clause does not include a right to cross-examine on irrelevant issues, it was within the trial court’s discretion to limit or deny cross-examination. *Adamski*, 198 Mich App at 138. Moreover, to the extent the evidence of the window tinting and height of the vehicle undermines the officers’ credibility, this Court has previously held that cross-

examination may be denied with respect to collateral matters bearing on general credibility. *Canter*, 197 Mich App at 564. And, in any event, the parties stipulated to the height of the truck's hood. Therefore, no plain error occurred as defendant was not denied the right to confront the witnesses against him when the trial court limited cross-examination of Officers Lynem and Searcy.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens